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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/733,752	12/08/2000	Gaines W. Hammond	BSC-181	4800
21874	7590	07/28/2005	EXAMINER	
EDWARDS & ANGELL, LLP			PELLEGRINO, BRIAN E	
P.O. BOX 55874			ART UNIT	PAPER NUMBER
BOSTON, MA 02205			3738	

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/733,752

Applicant(s)

HAMMOND ET AL.

Examiner

Brian E Pellegrino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 10-15, 19-22, 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-15, 19-22, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 10,19,21,25,26 are rejected under 35 U.S.C. 102(e) as being anticipated by Devonec et al. (5876417). Devonec et al. disclose (Fig. 7) a stent body member **8** with a lumen therein and a connecting segment **7** releasably joined to the distal end of the tubular element **8** via coupling means **14** in the form of a tubular body. It can be construed that the coupling means member **14** is releasably joined to the proximal end of the elongated body member connecting segment **7**. It can also be construed that Devonec discloses the coupling means are slip fit into the stent body member since the coupling member **14** as shown in Fig. 7 has a smaller profile or diameter than the stent diameter tube member, it inherently must be joined by slip fitting the member into the stent body since a smaller diameter would inherently fit into the larger diameter. It can be seen that the connecting segment **7** also includes a distal end **25** that is located outside the body. Devonec also discloses the tubular elements, which are connected together such that they are aligned to form the device form a single lumen, col. 2, lines 12-17. Devonec additionally discloses the body member has one or more side openings, col. 4, lines 24-26. The examiner is interpreting the claimed elements "distal terminating end" of the stent in this way: the stent having a body member is element **8** only. Claims in a pending application should be given their broadest reasonable

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interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). See also *In re Morris*, Fed. Cir. 1997 127 F3d 1048, 1054, 1055. Figs. 7-9 show the distal terminating end of stent **8** located completely proximal of the external sphincter **13**.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 11-15, 20, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devonec et al. '417 in view of Rovegno et al. (GB 2348138). Devonec is explained above. However, Devonec does not disclose the urethral device having a retaining member that is expandable at the proximal end of the urethral device. Rovegno et al. teach (Figs. VI, VII) a prosthetic member **60** with the body including the proximal end section of the prosthesis having retaining members or protuberances **63**. Additionally, it can be seen the device **60** edge forms a ledge for a pushing device. Fig. VII also shows the pushing device **70** having a flange **73** for engaging the ledge of the prosthesis. Rovegno also teaches (Fig. V) a handle **45** with an opening and is connected to the pushing tube **40** with a straight insertion end. It would have been obvious to one of ordinary skill in the art to use a proximal retaining member extending from the stent body and a handle with the pushing device as taught by Rovegno incorporated into the urethral apparatus system of Devonec et al. such that the stent does not get displaced during the surgical procedure and the handle provides the surgeon with more precision. Please note the intended use, as set forth in the claims, carries no weight in the

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absence of any distinguishing structure. Clearly, the structure is capable of receiving a pushing device since it is hollow.

### ***Response to Arguments***

Applicant's arguments filed 5/6/05 have been fully considered but they are not persuasive. Applicant states that Devonec's coupling member is not "releasably joined" to the stent member and connecting member but fails to point out how the prior art is different from the Applicant's means of joining. It is noted that the Applicant's specification suggests any means is possible to couple the stent to the coupling member and connecting segment, page 10. Thus it would appear that the means that Devonec uses is sufficient. It must also be noted that as best understood from the Devonec patent, Fig. 7 shows the coupling member 14 with a smaller diameter tubing. This clearly would imply that the means is fully capable of slip fitting into the stent member.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Pellegrino whose telephone number is (571) 272-4756. The examiner can normally be reached on Monday-Thursday from 6:30am to 4pm. The examiner can also be reached on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine

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McDermott, can be reached at (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

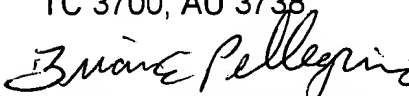
***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738

  
**BRIAN E. PELLEGRINO**  
**PRIMARY EXAMINER**